

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ELISAPETA F ITO,

Plaintiff,

v.

STATE OF HAWAII,

Defendant.

CASE NO. C14-5839 RBL

ORDER DENYING IFP

THIS MATTER is before the Court on Plaintiff Ito's Application to proceed *in forma pauperis* [Dkt. #1]. Ito was previously a resident of Hawaii. He lost his job there and moved to Washington. Hawaii apparently terminated his unemployment benefits there, when he moved here. Ito's proposed complaint asks this court to "re-open" that determination, and to force Hawaii to "reconsider their decision" and "grant unemployment benefits." [Dkt. #1-1 at 3]

A district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). The court has broad discretion in resolving the application, but "the privilege of proceeding *in forma pauperis* in civil actions for damages should be sparingly granted." *Weller v. Dickson*, 314 F.2d 598, 600 (9th Cir. 1963), *cert. denied* 375 U.S. 845 (1963). Moreover, a court should "deny leave to proceed

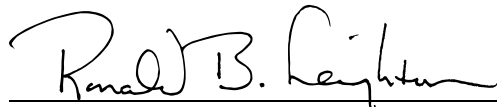
1 *in forma pauperis* at the outset if it appears from the face of the proposed complaint that the  
2 action is frivolous or without merit.” *Tripathi v. First Nat’l Bank & Trust*, 821 F.2d 1368, 1369  
3 (9th Cir. 1987) (citations omitted); *see also* 28 U.S.C. § 1915(e)(2)(B)(i). An *in forma pauperis*  
4 complaint is frivolous if “it ha[s] no arguable substance in law or fact.” *Id.* (citing *Rizzo v.*  
5 *Dawson*, 778 F.2d 527, 529 (9th Cir. 1985); *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir.  
6 1984). The Court will not grant *in forma pauperis* when it is concerned that a lawsuit is frivolous.

7 Ito’s proposed complaint does not meet this standard. He has not identified the basis for  
8 this Court’s jurisdiction over the State of Hawaii, or over what is essentially an appeal (or  
9 Motion for Reconsideration) of a decision made by a Hawaii state agency (or possibly a Hawaii  
10 state court). To the extent Plaintiff asks this Court to review a decision of the state court, this  
11 Court has no jurisdiction to do so. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923);  
12 *Dist. of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 486-87 (1983). And, to the extent  
13 Ito seeks to sue Hawaii for money damages, he may face an Eleventh Amendment sovereign  
14 immunity problem.

15 Plaintiff Ito’s IFP Application is therefore DENIED. Ito shall file an amended complaint  
16 addressing and correcting these deficiencies, or pay the filing fee within 15 days of this Order. If  
17 he does not, the case will be dismissed without prejudice, without further notice.

18 IT IS SO ORDERED.

19 Dated this 5<sup>th</sup> day of November, 2014.

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22 RONALD B. LEIGHTON  
23 UNITED STATES DISTRICT JUDGE  
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